No. 721

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

~~NO. 400 MISCELLANEOUS~~

SAMUEL TAYLOR,

Petitioner

V.

THE STATE OF ALABAMA,

Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

OPINIONS OF THE COURT BELOW

Opinion of the Supreme Court of Alabama in the original criminal case on appeal is reported as follows: Taylor v. State, —— Ala. ——, 30 So. 2d 256. There was no application for rehearing.

Opinion of the Supreme Court of Alabama in coram nobis proceedings is reported as follows: Ex Parte Samuel Taylor, In Re Samuel Taylor v. State of Alabama, 1st Div. 308, Supreme Court of Alabama, November 13, 1947, —— Ala. ——, 32 So. 2d 659 (Advanced Pamphlet No. 8), rehearing denied December 4, 1947, 32 So. 2d 659 (Advanced Pamphlet No. 8).

II.

JURISDICTION

Petitioner has applied for writ of certiorari to the Supreme Court of Alabama to review the judgment of said court rendered on November 13, 1947, refusing to grant leave to petitioner to petition the trial court for writ of error coram nobis, and judgment of said court denying petitioner a rehearing on December 4, 1947, under the provisions of Section 257(b) of the United States Judicial Code, as amended by Act of February 13, 1925, 43 Stat. 937, 28 U. S. C. A., Section 344(b).

III.

STATEMENT OF CASE

(When this brief was printed no printed record nor designation of the contents of such record had reached respondent. We have been as definite as possible in our references.)

Samuel Taylor, a twenty year old negro, was convicted in the Circuit Court of Mobile County on November 19, 1946, for the crime of rape. His victim was a fourteen year old white girl. His punishment was fixed at death.

Petitioner appealed to the Supreme Court of Alabama where the judgment of conviction was affirmed on the 24th day of April, 1947. Taylor v. State, —— Ala. ——, 30 So. 2d 256. Samuel Taylor did not apply for a rehearing in the Supreme Court of Alabama.

The record in the criminal appeal discloses that there was no motion for a new trial. Petitioner, Samuel Taylor,

was later denied clemency by the Governor of the State of Alabama, but was granted a reprieve from the execution of the death sentence until September 19, 1947.

On the eve of his execution, September 18, 1947, an application for leave to petition the Circuit Court of Mobile County, Alabama, for writ of error coram nobis was filed in the Supreme Court of Alabama.

In substance, the petition so filed in the Supreme Court of Alabama for leave to petition the Circuit Court of Mobile County, Alabama, for writ of error coram nobis alleges: (1) That the petitioner was convicted for the crime of rape on the basis of a confession introduced in evidence at his trial; (2) that said confession was involuntary and was obtained by force; (3) that petitioner, by reason of fear, failed to disclose to his attorney the fact that said confession was involuntary; and (4) that petitioner should now be allowed by this court to establish the involuntary nature of the confession in the trial court, and thereby have the judgment of guilty vacated.

The State of Alabama moved to dismiss the petition on substantially the following grounds:

1. The Supreme Court of Alabama, having judicial knowledge of the record on appeal in the criminal case, judicially knows the circumstances under which petitioner confessed to the crime of rape.

2. That the Supreme Court of Alabama and the Circuit Court of Mobile County, the trial court, have already adjudicated that the confession (or confessions) were voluntary and admissible in evidence, and being so adjudicated, cannot and should not now be subject to retrial under the principles governing the writ of error coram nobis.

3. That in view of the testimony in the record on appeal in the criminal case showing the voluntary nature of the confession, the allegations in the present petition are not reasonable or lack probability of truth.

4. That in view of the record in the criminal case, and especially the cross-examination by petitioner's counsel, petitioner's counsel must have known, and must have been told by petitioner at the time of the trial, the alleged facts showing petitioner's mistreatment, and hence that the allegations of the petition alleging no such knowledge by petitioner's counsel are unreasonable or lack the probability of truth.

5. That the Alabama Supreme Court, by reason of the record in the criminal case, judicially knows that petitioner's conviction was not based solely on the confession but on other testimony; hence had the facts been known to the court, namely, the facts alleged by petitioner constituting mistreatment, such disclosure would not have prevented the entry of a judgment of guilty.

6. That petitioner, neither at his trial nor in allegations of the petition, shows a meritorious defense.

The petition filed in the Alabama Supreme Court was supported by affidavits of three other negro men who were arrested and committed at the same time as petitioner. These affidavits tend to show that Samuel Taylor was beaten at regular intervals for three days prior to his first confession.

In support of its motion to dismiss the petition, the State of Alabama filed as exhibits eight photographs of the petitioner, Samuel Taylor, taken in the nude at various angles. These photographs are shown by affidavit to have

been taken by the Associate State Toxicologist immediately after the confession was made on July 8, 1946, and disclose no indication of physical violence or bodily injuries.

The petitioner introduced no further affidavits or evidence or any other showing in opposition to these photographs, and did not challenge their authenticity, or the fact that said photographs were made immediately after the confession. The Supreme Court of Alabama denied the application for leave to petition for writ of error coram nobis on the grounds that the allegations of the petitioner were not reasonable and lacked the probability of truth. Taylor v. State, —— Ala. ——, 32 So. 2d 659.

The petitioner's application for rehearing was denied without further opinion by the Supreme Court and petitioner now seeks to have the judgment of the Alabama Supreme Court reviewed on writ of certiorari, contending that the judgment of the Supreme Court of Alabama has deprived him of life or liberty without due process of law, and has denied to him the equal protection of the laws.

IV.

BRIEF AND ARGUMENT

This respondent, of course, does not take issue with the proposition that if a state, through its responsible officials, attempts to take away the life or liberty of a citizen by the use of a confession obtained by force, such action violates his rights under the due process clause of the Fourteenth Amendment. Haley v. Ohio, Supreme Court of United States, October Term, 1947, No. 51 (January 12, 1948). That is not the issue in this case. Neither do we dispute at this time the power of the Supreme Court of the United States to grant certiorari and reverse a conviction of a state court when a confession obtained by

force is used in evidence, even though that confession does not form the basis of the conviction. Malinski v. New York, 324 U. S. 401, 89 L. Ed. 1029. The issue to be decided here is whether or not, under the particular facts in this case, the State of Alabama has denied the petitioner a fair hearing and a fair trial by refusing to allow the petitioner to set up new and additional facts concerning an allegedly forced confession, when the Supreme Court is convinced that the allegations are unreasonable and lack a probability of truth.

It is the purpose of this brief and argument to demonstrate that the State of Alabama has not deprived the petitioner of life or liberty without due process of law, nor denied to him the equal protection of the laws.

A. ALABAMA AFFORDS A REMEDY TO PERSONS CONVICTED OF CRIME WHO CONTEND THAT THEIR TRIAL WAS CONDUCTED IN A MANNER IN DISREGARD OF CIVILIZED STANDARDS AND NOT AMOUNTING TO A FAIR HEARING UNDER THE DUE PROCESS CLAUSE.

The common law writ of error coram nobis is available in the State of Alabama. Johnson v. Williams, 244 Ala. 391, 13 So. 2d 683; Ex Parte Burns, 247 Ala. 98, 22 So. 2d 598; Smith v. State, 245 Ala. 161, 16 So. 2d 315; Ex Parte Lee, 248 Ala. 246, 27 So. 2d 147, cert. den. Lee v. Alabama, 329 U. S. 808, 67 S. Ct. 621; Redus v. Williams, 244 Ala. 459, 13 So. 2d 561, cert. den. 320 U. S. 773, 88 L. Ed. 464, 65 S. Ct. 85; Taylor v. State, —— Ala. ——, 32 So. 2d 659.

The requirements and necessary allegations for obtaining relief are now well known. Johnson v. Williams, supra; Ex Parte Burns, supra.

Briefly stated, a writ of error coram nobis is available to persons convicted of a crime in Alabama, when they contend that some error of fact occurred at the trial, which error of fact was not known to the court, or to the counsel, or to the parties at the time of the trial, and which, if it had been known, would have prevented the rendition of judgment. It is fundamental that an application for coram nobis cannot set up facts in contradiction of the record, nor be used in an attempt to re-litigate or an attempt to re-determine facts which have already been decided. **Johnson v. Williams, supra; Ex Parte Burns, supra.**

The necessary allegations and requirements for obtaining coram nobis are accurately set forth in the Alabama decisions, and such decisions do not set up a "procedural labyrinth" for the "strangling of constitutional rights." **Marino v. Ragen,** Supreme Court of United States, October Term, 1947, No. 93 (December 22, 1947). In addition to the other requirements for obtaining the writ as outlined above, the Alabama procedure requires that after affirmance of a criminal case a writ of coram nobis should be filed in the appellate court. See **Johnson v. Williams, supra.** This was done in the instant case. In addition to the other requirements and essentials for obtaining the writ the petitioner must convince the appellate court that his allegations are reasonable and contain a probability of truth. **Johnson v. Williams, supra.** In exercising its discretion to grant or refuse the writ, the appellate courts of the State of Alabama examine the petition not only to see whether a prima facie case has been made out, but also to see whether or not those particular allegations are reasonable and are probably true or untrue. Such a requirement cannot be said to be unreasonable, because the relief asked by the petition is extraordinary, and if granted without close scrutiny would completely disrupt the administration of justice. Criminals could always invent reasons to apply for the writ, and prevent indefinitely the execution of sentence.

In considering a petition for coram nobis, the appellate courts of Alabama take judicial knowledge of the record on the original criminal appeal and other records in connection with the coram nobis proceedings. **Johnson v. Williams, supra; Ex Parte Burns, supra.**

Contrary to the contention in the petitioner's brief, a motion to dismiss a petition for writ of error coram nobis does not admit as true, even for the purpose of argument, the allegations in the petition. Obviously, if the court is to decide whether the allegations are reasonable, and whether the allegations are probably true, a pleading filed by the State, and in this case a pleading specifically setting up the fact that the allegations are probably untrue, could not, by any stretch of the imagination, be said to admit the allegations in the petition. The controlling issue to be decided by the State Supreme Court is whether or not the allegations are probably true. **Johnson v. Williams, supra.** The motion filed by the State has no such effect, as contended in petitioner's brief.

Contrary to the contention in petitioner's brief, leave to file a petition for writ of error coram nobis has been granted by the appellate courts of Alabama. **Brown v. State, 32 Ala. App. 500, 27 So. 2d 226.**

It may be true that the Supreme Court of Alabama is strict in granting relief in coram nobis proceedings, but the answer to such contention is that the relief requested should be granted with caution. The few cases involving writs of coram nobis in the Alabama Supreme Court do not afford a broad enough picture for counsel to conclude that the Supreme Court of Alabama never will grant a petition for error coram nobis. The Supreme Court of Alabama is committed by its decisions, and when the proper case arises will grant the writ.

When it appears that those convicted of crimes are merely trifling with justice in an attempt to delay the execution of sentence, and the allegations of the petition are untrue and unreasonable, then relief will never be granted.

It is clear, therefore, that the State does afford a remedy for a person convicted to set up additional facts that were not known at the time of the trial, which could not have been known by reasonable diligence, and which, if they had been known, would have prevented rendition of judgment.

B. IN AFFORDING SAID REMEDY (CORAM NOBIS), THE SUPREME COURT OF ALABAMA DOES NOT DEPRIVE PERSONS OF LIFE OR LIBERTY WITHOUT DUE PROCESS OF LAW WHEN IT REQUIRES A PETITIONER TO MAKE AN ADEQUATE AND SUBSTANTIAL SHOWING THAT THE FACTS ALLEGED ARE REASONABLE AND CONTAIN THE PROBABILITY OF TRUTH.

In the case of Hysler v. Florida, 315 U. S. 411, 86 L. Ed. 932, 62 S. Ct. 688, decided by this court on March 2, 1942, this court held, in reviewing the denial of a petition for leave to file a petition for writ of error coram nobis in the Florida Supreme Court, that the Florida court had formulated the following rule in exercising discretion in granting or refusing writs of coram nobis:

"In the exercise of its discretion in matters of this sort the court should look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. . . . ."

It was further held in the Hysler case, supra, that coram nobis, including the above quoted rule, afforded "ample machinery for correcting the constitutional wrong." Alabama has the same machinery. Hysler v. Florida, supra, has not been overruled, and has been followed in both state and federal courts. Baker v. State, 150 Fla. 446, 7 So. 2d 792; Tinkoff v. United States, C. C. A. 7th, 129 F. 2d 21; Spaulding v. United States, C. C. A. 6th, 155 F. 2d 119.

The machinery used by Florida and by Alabama to afford a remedy to persons claiming that their constitutional rights have been violated has been held to be adequate. Hysler v. Florida, supra. In the operation of this machinery in this particular case, has the State of Alabama denied to the petitioner due process of law or equal protection of the laws?

C. THE SUPREME COURT OF ALABAMA HAD SUBSTANTIAL REASONS FOR HOLDING THAT THE APPLICATION FOR LEAVE TO PETITION FOR WRIT OF ERROR CORAM NOBIS WAS NOT REASONABLE AND LACKED THE PROBABILITY OF TRUTH.

In the case of Hysler v. Florida, supra, this court not only decided that the Florida coram nobis proceedings in a general way afforded due process, but this court also explored the foundations of the Florida decision holding that the petitioner had "failed to make the showing of substantiality." If this court is inclined to examine the reasons underlying the holding of the Alabama court in this case, to the effect that the allegations of the petition are probably untrue and are unreasonable, we call the attention of this court to the following items:

The Supreme Court of Alabama, at the time that it decided that the petition for writ of error coram nobis was

unreasonable and lacked the probability of truth, had before it and took judicial notice of the record in the original criminal case, Johnson v. Williams, supra; Ex Parte Burns, supra. In the last cited case, the Supreme Court of Alabama stated its rule:

> "We will look to the petition, in the light of the records of this court, to see if it meets the requirements of the foregoing authorities. Are the allegations of the petition reasonable and what is the probability of their truth? We take judicial knowledge of the records of this court."

The records of the Alabama Supreme Court showed that the confessions were made voluntarily. Taylor v. State, —— Ala. ——, 30 So. 2d 256.

It was alleged in the petition that Samuel Taylor was beaten at regular intervals for three days preceding his confession early on the morning of July 3, 1946. It is alleged in the petition that he was brutally beaten. The photographs introduced by the State showed unmistakably that Samuel Taylor had not been so brutally beaten. In fact, they showed that he had not been beaten at all. Ex Parte Taylor, In re Samuel Taylor v. State of Alabama, —— Ala. ——, 32 So. 2d 659 (Adv. Pam. No. 8), 1st Div., Supreme Court of Alabama, Nov. 13, 1947, rehearing denied 32 So. 2d 659 (Adv. Pam. No. 8), December 4, 1947.

This court may ask why were such photographs taken at a time immediately after the first confession took place. It is sufficient to state that this is not the first time that a member of the colored race has falsely contended that he was brutally beaten and convicted by the use of a forced confession. Perhaps the best way to prove the falsity of such charge is to show by photographic evidence that the person who claims that he was beaten so brutally was

not, in fact, injured at all and had no marks on his body. This was done in the Supreme Court of Alabama. Six out of seven justices on that court decided that the photographs "disclosed no indication on the body of any physical violence as set forth in the petition." One justice who wrote the dissenting opinion mistakenly found otherwise. The photographs which were not included by the petitioner in his record in this court, are available.

With this evidence before the Supreme Court of Alabama, how could it believe that Samuel Taylor had been beaten as he alleged in the petition?

It should also be considered by this court, in exploring the reasons underlying the State court's decision that the petition was probably untrue, that this petition was filed on September 18, 1947, the day before petitioner was to be executed on the following midnight. The petitioner asked the Supreme Court of Alabama not only to believe that the petitioner had been beaten for three days prior to his confession, but Taylor further asked the Alabama court to say that it was probably true that he had been afraid to tell his counsel or anyone else about the alleged brutality and torture from the time he was arrested until shortly before the time set for his execution. This time extended from July, 1946, when the torture is said to have been inflicted, through the time of the trial, November 19, 1946, four months later, through the time of the appeal decided about five months later, April 24, 1947, and then approximately five months more until shortly before the filing of the petition for coram nobis, on September 18, 1947.

During this time, the petitioner was not in the custody of those who, he contends, beat him. He was taken from the Pritchard jail to Mobile for his trial, and after his trial was taken to Kilby Prison in Montgomery. During

these intervening months, he was not in the presence of his alleged torturers, and had a full opportunity to consult his counsel. He does not contend in any way that any person other than the Pritchard police tortured him.

Having been sentenced to death on November 19, 1946, and having been removed to the State Penitentiary hundreds of miles away from the place where he was allegedly tortured, the petitioner asks the Supreme Court of Alabama to believe that he was afraid during this entire time to tell counsel. The Supreme Court of Alabama was justified in doubting the veracity of such a contention.

There is nothing in the whole record in this case to indicate that the defendant was subnormal in intelligence. This fact is recited in the opinion of the Supreme Court of Alabama. **Ex Parte Taylor, In re Samuel Taylor v. State of Alabama, supra.**

In connection with the petitioner's contention that he was constantly in fear from disclosing the facts of the alleged torture from July 3, 1946, until shortly before the filing of the petition on September 18, 1947, it should be pointed out that there is no supporting affidavit attached to the petition by the petitioner's trial counsel, Mr. Henry Aldridge of Mobile, Alabama, confirming the alleged fact that he was not told by the petitioner that he was tortured and beaten. We believe the lack of this affidavit is significant. One of petitioner's contentions is that he was afraid to tell his counsel. If this fact had been true, certainly an affidavit to that effect could have been obtained and could have been most convincing. The record in the original criminal appeal indicates that trial counsel was most diligent in cross-examining witnesses who testified about the confessions. Trial counsel asked searching questions to determine whether or not the petitioner had been threatened or molested in any way prior to the time the confessions

were made. The question of the voluntary nature of the confessions was completely explored on the original trial of this case and treated in the opinion of the Supreme Court of Alabama in the criminal appeal. It was decided that the confessions were properly introduced in evidence, there being no evidence whatsoever that the confessions were involuntary, and there being ample evidence to show that the confessions were vountarily and freely given.

We do not contend that petitioner's allegation of innocence was an essential allegation of the petition. We do point out, however, that such an allegation or the lack of such allegation can be taken into consideration by the Supreme Court in exercising its discretion in granting writs of coram nobis. The writ was not designed to release the guilty. The petitioner did not allege in the petition in the State court that he was innocent or that he was not guilty. He has not added that allegation to his petition for certiorari in the Supreme Court of the United States. The petitioner has nowhere, even at his trial, shown that he was not guilty. He did not take the stand. He presented no alibi. He not only made three separate and distinct confessions, but drew a map with his own hand showing the location of the crime. He identified the victim from among several girls shown to him for that purpose. The petitioner offered no meritorious defense on trial, offered no meritorious defense on coram nobis proceedings in the State court, and offers none now. Petitioner merely contends that on the eve of his execution he suddenly remembered that he had been beaten, and suddenly remembered that he had been afraid to tell about the beatings for many months. The Supreme Court of Alabama was justified in refusing to believe that such a contention had a probability of truth or was reasonable.

The petitioner was ably represented at his trial by counsel. On appeal to the Alabama Supreme Court, he was likewise ably represented. Counsel not only filed briefs,

but argued the case orally before the Supreme Court of Alabama. The only fair conclusion that can be reached by this court is that the Supreme Court of Alabama had ample and sufficient grounds for refusing to allow petitioner to trifle with justice by allowing him to attempt to prove palpably false allegations.

D. IN DENYING THE PETITION FOR LEAVE TO FILE CORAM NOBIS PROCEEDINGS IN THE TRIAL COURT, THE SUPREME COURT OF ALABAMA DID NOT DENY PETITIONER THE EQUAL PROTECTION OF THE LAWS.

We do not believe that this is a serious contention in this case. There is no showing or any evidence whatsoever that Taylor has been "singled out for invidious treatment" by the Alabama Supreme Court. It is further apparent that it is not a fact that the Alabama Supreme Court has granted applications in other cases but not in this one. The claim of a denial of equal protection is without substance. **Hysler v. Florida, supra.**

CONCLUSION

(1) The State of Alabama furnishes ample procedure to correct errors of fact such as the conviction on the basis of an involuntary confession, when such fact was not known at the time of the trial, could not have been ascertained by the exercise of reasonable diligence, and which, if such fact had been known, would have prevented the rendition of judgment. (2) In affording this remedy, the Supreme Court of Alabama does not deny due process of law by setting up the requirements that the allegations of such facts must satisfy the Supreme Court that such facts are reasonable and contain a probability of truth. (3) The

reasons underlying the denial of coram nobis in this case are substantial and convincing, and it cannot be said that the Supreme Court of Alabama, in denying the relief asked, deprived the petitioner of life or liberty without due process of law.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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CERTIFICATE

I hereby certify that I have forwarded a copy of the foregoing brief to Thurgood Marshall, 20 West Fortieth Street, New York, N. Y., and Nesbitt Elmore, Professional Center Building, Montgomery, Alabama, attorneys for petitioner, on this the 20 day of March, 1948.

ATTORNEY FOR RESPONDENT.

A. A. CARMICHAEL,

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